IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14269 of 1993

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.S.R.T.C. - Petitioner(s)

Versus

SURESHBHAI G. GAMIT - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.
MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

1.0 The petitioner Corporation has challenged the award dated 31.07.1993 passed by the Labour Court, Surat, in

Reference (LCS) No. 506 of 1989, whereby the petitioner was directed to reinstate the respondent to his original post with full back wages.

2.0 The brief facts of the case are that the respondent herein was working as a Conductor with the petitioner Corporation. While the respondent was on duty, the bus was checked by the Checking Squad of the petitioner and the Squad found certain irregularities in the issuance of tickets by the respondent. Therefore, departmental inquiry was held against the respondent and since the charges leveled against him were proved, by order dated 23.02.1988, a penalty of stoppage of increment with cumulative effect for five years was imposed.

2.1 The Appellate Authority of the petitioner, after issuing show cause notice for enhancement, dismissed the workman from service with effect from 28.04.1989. Against the said order, the workman raised an industrial dispute by way of a reference. The Labour Court, by impugned award, passed the aforesaid directions, Hence, this petition.

3.0 I have heard learned counsel for the parties and

perused the documents placed on record. While admitting the matter on 18.08.1994, this Court had stayed the operation of the impugned award qua back wages only, since the petitioner Corporation has reinstated the respondent workman. Since the respondent is already reinstated, in the interest of justice, it would not be appropriate to disturb the said position after almost eleven years. Hence, this Court is not considering this petition so far as the grant of reinstatement is concerned.

4.0 Having gone through the award, it appears that the Labour Court has not given any cogent reasons as to on what basis it has awarded full back wages to the respondent. In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.1 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages

should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the order awarding back wages is required to be quashed and set aside.

5.0 However, while exercising powers u/s.11(A) of the Industrial Disputes Act, 1947, the Labour Court has not imposed any penalty. While substituting the order of dismissal, the Labour Court ought to have imposed some penalty on the respondent. Looking to the charges proved against the respondent and considering the fact that the respondent had committed four defaults in the past, I am of the opinion that a penalty of stoppage of ONE increment with future effect is required to be imposed on the respondent.

6.0 In the result, this petition is partly allowed. The impugned award of the Labour Court qua granting reinstatement in service is confirmed; and, the direction qua awarding full back wages is quashed and set aside. Further, a penalty of stoppage of one increment with future effect is imposed on the respondent. It is clarified that the respondent workman shall be entitled for all benefits from the date of the publication of the

award till he is reinstated in service, after the aforesaid penalty has been imposed. The said benefits to be given within a period of three months from the receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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